



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2014-0290; FRL-9911-73-Region 7]**

**Approval and Promulgation of Implementation Plans; State of Missouri; Infrastructure SIP Requirements for the 2008 Lead National Ambient Air Quality Standard.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Missouri addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Lead (Pb), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2014-0290, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *Email:* bhesania.amy@epa.gov.
3. *Mail:* Ms. Amy Bhesania, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.
4. *Hand Delivery or Courier:* Deliver your comments to Ms. Amy Bhesania, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2014-0290. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or email information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> website is an

"anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at U.S. Environmental

Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Bhesania, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551-7147; *fax number:* (913) 551-7065; *email address:* bhesania.amy@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional information by addressing the following questions:

- I. What is Being Addressed in this Document?
- II. What are the Applicable Elements Under Sections 110(a)(1) and (2) Related to the 2008 Pb NAAQS?
- III. What is EPA's Approach to the Review of Infrastructure SIP Submissions?
- IV. What is EPA's Evaluation of How the State Addressed the Relevant Elements of Sections 110(a)(1) and (2)?
- V. What Action is EPA Proposing?
- VI. Statutory and Executive Order Review

## **I. What is Being Addressed in this Document?**

EPA is proposing action on a December 20, 2011, SIP submission from Missouri that addresses the infrastructure requirements of CAA sections 110(a)(1) and (a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and (a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of

SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

**II. What are the Applicable Elements Under Sections 110(a)(1) and (2) Related to the 2008 Pb NAAQS?**

On October 15, 2008, EPA revised the primary and secondary Pb NAAQS (hereafter the 2008 Pb NAAQS). The level of the primary (health-based) standard was revised to 0.15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling 3-month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard (73 FR 66964).<sup>1</sup>

For the 2008 Pb NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) through

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<sup>1</sup> Although the effective date of the Federal Register notice for the final rule was January 12, 2009, the rule was signed by the Administrator and publicly disseminated on October 15, 2008. Therefore, the deadline for submittal of infrastructure SIPs for the 2008 Pb NAAQS was October 15, 2011.

earlier SIP submissions in connection with previous NAAQS. Nevertheless, pursuant to section 110(a)(1), states have to review and revise, as appropriate, their existing SIPs to ensure that they are adequate to address the 2008 Pb NAAQS. To assist states in meeting this statutory requirement, EPA issued guidance on October 14, 2011, addressing the infrastructure SIP elements required under sections 110(a)(1) and (2) for the 2008 Pb NAAQS.<sup>2</sup> EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources); (D) Interstate and international transport; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas; (J) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection; (K) Air quality and

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<sup>2</sup> Stephen D. Page, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)," Memorandum to EPA Regional Air Division Directors, Regions I-X, October 14, 2011 (2011 Lead Infrastructure SIP Guidance).

modeling/data; (L) Permitting fees; and (M)

Consultation/participation by affected local entities.

### **III. What is EPA's Approach to the Review of Infrastructure SIP Submissions?**

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.<sup>3</sup> EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

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<sup>3</sup> For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.



The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.<sup>4</sup> Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.<sup>5</sup> This

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<sup>4</sup> See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule,” 70 FR 25162, at 25163 – 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

<sup>5</sup> EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the

ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions

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ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

either individually or in a larger combined action.<sup>6</sup> Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.<sup>7</sup>

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section

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<sup>6</sup> See, e.g., "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 PM<sub>2.5</sub> NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM<sub>2.5</sub> NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS).

<sup>7</sup> On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.<sup>8</sup>

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area

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<sup>8</sup> For example, implementation of the 1997 PM<sub>2.5</sub> NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for

particular elements.<sup>9</sup> EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).<sup>10</sup> EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. While today's proposed action relies on the specific guidance issued for the 2008 Pb NAAQS, we have also considered this more recent 2013 guidance where applicable (although not specifically issued for the 2008 Pb NAAQS) and have found no conflicts between the issued guidance and review of Missouri's SIP submission. Within the 2013 Guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant

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<sup>9</sup> EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

<sup>10</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

in the context of infrastructure SIP submissions.<sup>11</sup> The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2).

Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation

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<sup>11</sup> EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (e.g., whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHGs. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 PM<sub>2.5</sub> NAAQS. Accordingly,



the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions

from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.<sup>12</sup> It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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<sup>12</sup> By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.<sup>13</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such

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<sup>13</sup> For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

as past approvals of SIP submissions.<sup>14</sup> Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.<sup>15</sup>

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<sup>14</sup> EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

<sup>15</sup> See, e.g., EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

**IV. What is EPA's Evaluation of How the State Addressed the Relevant Elements of Sections 110(a)(1) and (2)?**

On December 20, 2011, EPA Region 7 received Missouri's infrastructure SIP submission for the 2008 Pb standard. This SIP submission became complete as a matter of law on June 20, 2012. EPA has reviewed Missouri's infrastructure SIP submission and the relevant statutory and regulatory authorities and provisions referenced in that submission or referenced in Missouri's SIP. Below is EPA's evaluation of how the state addressed the applicable elements of section 110(a)(2) for the 2008 Pb NAAQS.

(A) *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each NAAQS.<sup>16</sup>

The Revised Statutes of the State of Missouri (RSMo), otherwise referred to as Missouri's "Air Conservation Law," and Missouri's Air Pollution Control Rules authorize the Missouri

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<sup>16</sup> The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2008 Pb NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Department of Natural Resources (MDNR) to regulate air quality and implement air quality control regulations. Specifically, 643.030, RSMo authorizes the Air Conservation Commission (MACC) of the State of Missouri to control air pollution, which is defined in 643.020, RSMo to include air contaminants in quantities, of characteristics and of a duration which cause or contribute to injury to human, plant, or animal life or health or to property. Missouri's Air Conservation Law, 643.050, RSMo, authorizes the MACC to classify and identify air contaminants. Missouri rule 10 CSR 10-6.020 "Definitions and Common Reference Tables" is also used to define terms that are necessary to classify pollutants and implement and enforce standards.

Missouri's rule 10 CSR 10-1.010 "General Organization" reiterates the MACC's responsibility to establish air quality control regions as well as adopt, promulgate, amend and rescind rules. Subsection (3)B of 10 CSR 10-1.010 tasks the MDNR Air Pollution Control Program with carrying out the policies of the MACC. Missouri rule 10 CSR 10-6.010 "Ambient Air Quality Standards" adopts the 2008 Pb standard as promulgated by EPA. In addition, section (12) of 10 CSR 10-6.030 "Sampling Methods for Air Pollution Sources" establishes the appropriate sampling method for Pb from air pollution sources, and similarly,

subsections (4)(G) and (4)(O) of 10 CSR 10-6.040 "Reference Methods" incorporate by reference the relevant appendices in 40 CFR part 50 for measuring and calculating the concentration of Pb in the atmosphere to determine whether the standard has been met. Therefore, Pb is an air contaminant which may be regulated under Missouri law.

Missouri's Air Conservation Law, 643.050, RSMo authorizes the MACC, among other things, to regulate the use of equipment known to be a source of air contamination and to establish emissions limitations for air contaminant sources. Specifically to create control measures for Pb, Missouri rule 10 CSR 10-6.120 "Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Installations" provides specific Pb emission limitations for both the primary and secondary smelter operations in Missouri. Missouri also establishes timetables for compliance in its rules, as appropriate.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that the Missouri SIP adequately addresses the requirements of



section 110(a)(2)(A) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011, SIP submission.

*(B) Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, 643.050, RSMo provides the enabling authority necessary for Missouri to fulfill the requirements of section 110(a)(2)(B). The Air Pollution Control Program and Air Quality Analysis Section, within MDNR, implement these requirements. Along with their other duties, the monitoring program collects air monitoring data, quality assures the results, and reports the data. Further, Missouri rule 10 CSR 10-1.010(2)(D) "General Organization" outlines the roles, duties and obligations of the Air Pollution Control Program including those for air quality monitoring.

MDNR submits annual monitoring network plans to EPA for approval, including its Pb monitoring network, as required by 40 CFR 58.10. Prior to submission to EPA, Missouri makes the plan available for public review on MDNR's web site at

(<http://www.dnr.mo.gov/env/apcp/monitoring/monitoringnetworkplan.pdf>). MDNR also conducts five-year monitoring network assessments, including the Pb monitoring network, as required by 40 CFR 58.10(d). On November 22, 2013, EPA approved Missouri's 2013 Ambient Air Quality Monitoring Plan and on October 27, 2010, EPA approved Missouri's Five-Year Air Monitoring Network Assessment. Subsection (4)(G) of Missouri rule 10 CSR 10-6.040 "Reference Methods" requires that ambient concentrations of Pb be measured in accordance with the applicable Federal regulations in 40 CFR part 50, or an equivalent method as approved by EPA pursuant to 40 CFR part 53. Furthermore, Missouri submits air quality data to EPA's Air Quality System (AQS) in a timely manner, pursuant to the provisions of the state's grant work plans developed in conjunction with EPA.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that the Missouri SIP meets the requirements of section 110(a)(2)(B) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011 submission.

*(C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources):* Section 110(a)(2)(C) requires states to include the following three elements in the SIP: (1) a program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (i.e., state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).<sup>17</sup>

*(1) Enforcement of SIP Measures.* With respect to enforcement of requirements of the SIP, the Missouri statutes provide authority for MDNR to enforce the requirements of the Air Conservation Law, and any regulations, permits, or final compliance orders issued under the provisions of that law. For example, 643.080, RSMo authorizes MDNR to issue compliance orders for violations of the Air Conservation Law, rules promulgated thereunder (which includes rules comprising the

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<sup>17</sup> As discussed in further detail below, this infrastructure SIP rulemaking will not address the Missouri program for nonattainment area related provisions, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

Missouri SIP), and conditions of any permits (which include permits under SIP-approved permitting programs). Missouri Air Conservation Law 643.085, RSMo authorizes MDNR to assess administrative penalties for violations of the statute, regulations, permit conditions, or administrative orders. In addition, 643.151, RSMo authorizes the MACC to initiate civil actions for these violations, and to seek penalties and injunctive relief to prevent any further violation. The Air Conservation Law 643.191, RSMo provides for criminal penalties for known violations of the statute, standards, permit conditions, or regulations promulgated thereunder.

In addition, state regulations governing the MACC in subsection (3) of Missouri rule 10 CSR 10-1.010 "General Organization" reinforce the state's authority by authorizing the MACC to make investigations, make orders and determinations, and refer alleged violations to the county prosecutor or attorney general. Similarly, the director of MDNR is authorized to investigate complaints, issue abatement orders, recommend that legal action be taken by the attorney general and enforce provisions of the Air Conservation Law. Paragraph (3)(B)4.B. establishes the Air Pollution Control Program's Compliance and Enforcement section and its duties.

(2) *Minor New Source Review*. Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller state-wide minor sources (Missouri's major source permitting program is discussed in (3) below), Missouri has a SIP-approved program under rule 10 CSR 10-6.060 "Construction Permits Required" to review such sources to ensure, among other requirements, that new and modified sources will not interfere with NAAQS attainment. The state rule contains two general categories of sources subject to the minor source permitting program. The first category is "de minimis" sources (regulated at 10 CSR 10-6.060(5)) -- sources that are not exempted or excluded by rule 10 CSR 10-6.061 "Construction Permit Exemptions" or are permitted under rule 10 CSR 10-6.062 "Construction Permits By Rule" and emit below specified levels defined at 10 CSR 10-6.020(3)(A) "Definitions and Common Reference Tables." Permits for these sources may only be issued if any construction or modification at the source does not result in net emissions increases above "de minimis" levels.

The second category of minor sources are those that emit above the de minimis levels, but below the major source significance levels. Permits for these sources may only be

issued after a determination, among other requirements, that the proposed source or modification would not interfere with attainment or maintenance of a NAAQS (10 CSR 10-6.060(6)).

In this action, EPA is proposing to approve Missouri's infrastructure SIP for the 2008 Pb standard with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program to the extent that it is inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element (C) (e.g., 76 FR 41076-41079).

(3) *Prevention of Significant Deterioration (PSD) permit program.* Missouri also has a program approved by EPA as meeting the requirements of part C, relating to prevention of significant deterioration of air quality. In order to demonstrate that Missouri has met this sub-element, this PSD program must cover requirements not just for the 2008 Pb NAAQS,

but for all other regulated NSR pollutants as well. As stated in the October 14, 2011, Pb Infrastructure SIP guidance, EPA has not proposed to amend the PSD regulations with regard to the Pb NAAQS because it believes that, generally, there is sufficient guidance and regulations already in place to fully implement the revised Pb NAAQS.

In a previous action on June 21, 2013, EPA determined that that Missouri has a program in place that meets all the PSD requirements related to all other regulated NSR pollutants (78 FR 37457). Missouri has demonstrated that its PSD program covers the requirements for the Pb NAAQS and all other regulated NSR pollutants through section (8) of Missouri rule 10 CSR 10-6.060 "Construction Permits Required."

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, with respect to the requirements of section 110(a)(2)(C) for the 2008 Pb NAAQS, EPA is proposing to approve this element of the December 20, 2011, submission.

*(D) Interstate and international transport:* Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II). Section 110(a)(2)(D)(i)(I) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of any NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality or to protect visibility.

With respect to prongs 1 and 2, the physical properties of Pb prevent Pb emissions from experiencing a significant degree of travel in the ambient air. No complex chemistry is needed to form Pb or Pb compounds in the ambient air; therefore, concentrations of Pb are typically highest near Pb sources. More specifically, there is a sharp decrease in Pb concentrations as the distance from the source increases. According to EPA's report entitled *Our Nation's Air: Status and Trends Through*



2010, Pb concentrations that are not near a source of Pb are approximately 8 times less than the typical concentrations near the source

(<http://www.epa.gov/airtrends/2011/report/fullreport.pdf>). EPA believes that the requirements of prongs 1 and 2 can be satisfied through a state's assessment as to whether a lead source located within its state in close proximity to a state border has emissions that contribute significantly to the nonattainment in or interfere with maintenance of the NAAQS in the neighboring state.

Missouri has two Pb nonattainment areas with sources of Pb emissions over 0.5 tons per year (tpy). The first area is the Buick/Viburnum Trend area with four Pb-emitting sources. These sources are located approximately 90 miles away from any state border and therefore do not have an impact on any other state. The other area, Herculaneum, has one source with current Pb emissions over 0.5 tpy. This source is on the banks of the Mississippi River, just across from the State of Illinois. The Herculaneum facility is the only Pb source in Missouri near enough to a state border to have the potential for an impact on another state's ambient air. For this source, in October 2010 the facility owner, The Doe Run Company, entered into a Consent

Decree with EPA and MDNR to cease smelting operations at the Herculaneum facility on or before April 30, 2014.<sup>18</sup> On April 14, 2013, EPA received, as part of the attainment demonstration for the 2008 Pb NAAQS, modeling from MDNR. EPA has conducted an independent evaluation of the modeling, including the impacts of the facility shutdown, and agrees that the facility will not contribute significantly to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in Illinois. EPA notes that this is not a determination of whether the modeling submitted by Missouri supports approval of its 2008 Pb NAAQS attainment plan, as that matter will be the subject of a future SIP action as discussed below in the analysis of *Nonattainment areas*, section 110(a)(2)(I). However, EPA has verified that the modeling was done in accordance with the necessary guidance under 40 CFR 51, appendix W (Guidance on Air Quality Models), and that the modeling demonstrated that this Pb source does not have a significant impact on Illinois.

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II) - prong 3, EPA notes that Missouri's satisfaction of the applicable infrastructure SIP PSD requirements for attainment/unclassifiable areas of the 2008 Pb

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<sup>18</sup> U. S. and State of Missouri vs. Doe Run Resources Corporation, Multimedia Consent Decree, dated October 11, 2010; lodged March 11, 2013 (Civil Action No. 4:10-cv-1895-JCH).

NAAQS have been detailed in the section addressing section 110(a)(2)(C). For sources not subject to PSD for any one of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS, Missouri has adopted the nonattainment new source review (NNSR) provisions required for the 2008 Pb NAAQS through section (7) of Missouri rule, 10 CSR 10-6.060, "Construction Permits Required." EPA also notes that the proposed action in that section related to PSD is consistent with the proposed approval related to PSD for section 110(a)(2)(D)(i)(II).

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II) - prong 4, significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source and most, if not all, Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, Pb generally comprises a small fraction of coarse and fine particles. Furthermore, when evaluating the extent that Pb could

impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less than 0.10%).<sup>19</sup>

Section 110(a)(2)(D)(ii) also requires that the SIP insure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively.

Section 126(a) of the CAA requires new or modified sources to notify neighboring states of potential impacts from sources within the state. Missouri regulations require that affected states receive notice prior to the commencement of any construction or modification of a source. Missouri's rule 10 CSR 10-6.060(6), "Construction Permits Required" requires that the review of all PSD permit applications follow the procedures of section (12)(A), Appendix A. Appendix A, in turn, requires that the permitting authority shall issue a draft permit for public comment, with notification to affected states on or before the time notice is provided to the public. In addition, no Missouri source or sources have been identified by EPA as having any interstate impacts under section 126 in any pending actions relating to any air pollutant.

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<sup>19</sup> Analysis by Mark Schmidt, OAQPS, "Ambient Pb's Contribution to Class I Area Visibility Impairment," June 17, 2011.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA against Missouri with respect to any air pollutant. Thus, the state's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address sections 110(a)(2)(D)(i)(II) - prongs 1 through 4 and 110(a)(2)(D)(ii) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011, submission.

*(E) Adequate authority, resources, implementation, and oversight:* Section 110(a)(2)(E) requires that SIPs provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that

the state comply with the requirements relating to state boards, pursuant to section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

(1) Section 110(a)(2)(E)(i) requires states to establish that they have adequate personnel, funding and authority. With respect to adequate authority, we have previously discussed Missouri's statutory and regulatory authority to implement the 2008 Pb NAAQS, primarily in the discussion of section 110(a)(2)(A) above. Neither Missouri nor EPA has identified any legal impediments in the state's SIP to implementation of the NAAQS.

With respect to adequate resources, MDNR asserts that it has adequate personnel to implement the SIP. The infrastructure SIP submission for the 2008 Pb NAAQS describes the regulations governing the various functions of personnel within the Air Pollution Control Program, including the Administration, Technical Support (Air Quality Analysis), Planning, Enforcement, and Permit Sections of the program (10 CSR 10-1.010(2)(D) "Ambient Air Quality Standards").

With respect to funding, the Air Conservation Law requires the MACC to establish an annual emissions fee for sources in order to fund the reasonable costs of administering various air pollution control programs. The Air Conservation Law, 643.079, RSMo provides for the deposit of the fees into various subaccounts (e.g., a subaccount for the Title V operating permit program used for Title V implementation activities; a subaccount for non-Title V air pollution control program activities). The state uses funds in the non-Title V subaccounts, along with general revenue funds and EPA grants under, for example, sections 103 and 105 of the CAA, to fund the programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement the SIP.

With respect to authority, Chapter 643, RSMo provides the authority necessary to carry out the SIP requirements as referenced above in element A.

(2) Conflict of interest provisions - section 128. Section 110(a)(2)(E)(ii) requires that each state SIP meet the requirements of section 128, relating to representation on state boards and conflicts of interest by members of such boards. Section 128(a)(1) requires that any board or body which approves

permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders under the CAA. Section 128(a)(2) requires that members of such a board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest.

On June 21, 2013, EPA approved Missouri's SIP revision addressing the section 128 requirements (78 FR 37457). For a detailed discussion on EPA's analysis of how Missouri meets the section 128 requirements, see EPA's April 10, 2013, proposed approval of Missouri's 1997 and 2006 PM<sub>2.5</sub> infrastructure SIP (78 FR 21281).

(3) With respect to assurances that the state has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, 643.190, RSMo designates the MDNR as the air pollution control agency "for all purposes" of the CAA. Although 643.140, RSMo authorizes the MACC to grant local governments such as cities or counties authority to carry out their own air pollution control programs, the MACC retains authority to enforce the provisions of Missouri's Air Conservation Law in



these local areas, notwithstanding any such authorization (643.140.4, RSMo). The MACC may also suspend or repeal the granting of authority if the local government is enforcing any local rules in a manner inconsistent with state law (643.140.10, RSMo).

There are three local air agencies that conduct air quality work in Missouri: Kansas City, Springfield/Greene County and St. Louis County. The MDNR's Air Pollution Control Program has a signed Memorandum of Understanding (MOU) with Kansas City and Springfield/Greene County and a draft agreement for St. Louis County (to be finalized) which outlines the responsibilities for air quality activities with each local agency. The MDNR Air Program oversees the activities of the local agencies to ensure adequate implementation of the Missouri SIP. EPA conducts reviews of the local program activities in conjunction with its oversight of the state program.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address

section 110(a)(2)(E) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011 submission.

*(F) Stationary source monitoring system:* Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Each SIP shall require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and requires that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

To address this element, 643.050.1(3)(a) of the Air Conservation Law authorizes the MACC to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to rate, period of emission and composition of effluent, and 643.192.2, RSMo requires an annual report that summarizes changes in air quality measured by MDNR and local and county air

pollution control agencies. Missouri rule 10 CSR 10-6.030 "Sampling Methods for Air Pollution Sources" incorporates various EPA reference methods for sampling and testing source emissions, including methods for Pb emissions. The Federal test methods are in 40 CFR part 60, appendix A. Using these particular reference methods for Pb emissions, 10 CSR 10-6.120 "Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations" has stack testing and reporting requirements for certain stationary sources of Pb emissions in Missouri.

Missouri rule 10 CSR 10-6.110 "Reporting & Emission Data, Emission Fees, and Process Information" also requires monitoring of emissions and filing of periodic reports on emissions (see (4)(A) for the specific information required). Missouri uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. Missouri makes this information available to the public (10 CSR 10-6.110(3)(D)). Missouri rule 10 CSR 10-6.210 "Confidential Information," specifically excludes emissions data from confidential treatment. Under that rule emissions data

includes the results of any emissions testing or monitoring required to be reported by sources under Missouri's air pollution control rules (10 CSR 10-6.210(3)(B)2).

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(F) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011, submission.

*(G) Emergency authority:* Section 110(a)(2)(G) requires SIPs to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in section 303 of the CAA), and to include contingency plans to implement such authorities as necessary.

The Air Conservation Law, 643.090.1, RSMo authorizes the MACC or the director of MDNR to declare an emergency where the ambient air, "due to meteorological conditions and a buildup of air contaminants" in Missouri, may present an "emergency risk to the public health, safety, or welfare." The MACC or director may, with the written approval of the governor, by order

prohibit, restrict or condition all sources of air contaminants contributing to the emergency condition, during such periods of time necessary to alleviate or lessen the effects of the emergency condition. The statute also enables the MACC to promulgate implementing regulations. Even in the absence of an emergency condition, 643.090.2, RSMo also authorizes the MACC or the director to issue "cease and desist" orders to any specific person who is either engaging or may engage in activities which involve a significant risk of air contamination or who is discharging into the ambient air any air contaminant, including Pb, and such activity or discharge presents a clear and present danger to public health or welfare. Missouri rule 10 CSR 10-1.010 "General Organization" enlists the MACC to develop, and the director to enact, air pollution emergency alert procedures.

Based on EPA's experience to date with the Pb NAAQS and designated Pb nonattainment areas, EPA expects that such an event would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, EPA believes that the central components of a contingency plan would be to reduce emissions from the source at issue (if necessary, by curtailing operations) and public communication as needed. EPA believes

that Missouri's statutes referenced above provide the requisite authority to the MACC and the director of MDNR to address such situations.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in that submission or referenced in Missouri's SIP, EPA believes that the Missouri SIP adequately addresses section 110(a)(2)(G) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011, submission.

*(H) Future SIP revisions:* Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

In addition to the MACC's general enabling authority in 643.050, RSMo of the Air Conservation Law, discussed previously in element (A), 643.055.1, RSMo grants the MACC and MDNR authority to promulgate rules and regulations to establish standards and guidelines, to ensure that Missouri complies with the provisions of the Federal CAA. Missouri's rule 10 CSR 10-1.010(2) "General Organization" grants similar powers to MDNR.

This includes the authority to submit SIP revisions to the EPA for approval as necessary to respond to a revised NAAQS and to respond to EPA findings of substantial inadequacy (e.g., 71 FR 46860 (August 15, 2006), in which EPA approved Missouri rules promulgated in response to EPA's NO<sub>x</sub> SIP call for Missouri and other states).

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that Missouri has adequate authority to address section 110(a)(2)(H) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011, submission.

*(I) Nonattainment areas:* Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission

schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

*(J) Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, the SIP should provide a process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies. Section 643.050.3 RSMo of the Missouri Air Conservation Law requires the MACC to consult and cooperate with other Federal and state agencies, and with political subdivisions, for the purpose of prevention, abatement, and control of air pollution. Missouri



also has appropriate interagency consultation provisions in its preconstruction permit program. For instance, Missouri rule 10 CSR 10-6.060(12)(B)2.E "Construction Permits Required" requires that when a permit goes out for public comment, the permitting authority must provide notice to local air pollution control agencies, the chief executive of the city and county where the installation or modification would be located, any comprehensive regional land use planning agency, any state air program permitting authority, and any Federal Land Manager whose lands may be affected by emissions from the installation or modification.

(2) With respect to the requirements for public notification in section 127, the infrastructure SIP should provide citations to regulations in the SIP requiring the air agency to regularly notify the public of instances or areas in which any NAAQS are exceeded; advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. Missouri rule 10 CSR 10-6.130 "Controlling Emissions During Episodes of High Air Pollution Potential," discussed previously in connection with

the state's authority to address emergency episodes, contains provisions for public notification of various air pollutant levels, and measures which can be taken by the public to reduce concentrations. In addition, information regarding air pollution and related issues, is provided on an MDNR website, <http://www.dnr.missouri.gov/env/apcp/index.html>.

(3) With respect to the applicable requirements of part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection, as noted in above under element (C), the Missouri SIP meets the PSD requirements, incorporating the Federal rule by reference. With respect to the visibility component of section 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to element J after the promulgation of a new or revised NAAQS.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and

regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that Missouri has met the applicable requirements of section 110(a)(2)(J) for the 2008 Pb NAAQS in the state and is therefore proposing to approve this element of the December 20, 2011, submission.

*(K) Air quality and modeling/data:* Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

Missouri has authority to conduct air quality modeling and report the results of such modeling to EPA. Section 643.050 of the Air Conservation Law provides the MACC with the general authority to develop a general comprehensive plan to prevent, abate and control air pollution. Missouri's Air Conservation Law 643.055, RSMo grants the MACC the authority to promulgate rules and regulations to establish standards and guidelines to ensure that Missouri is in compliance with the provisions of the CAA. As an example of regulatory authority to perform modeling for purposes of determining NAAQS compliance, Missouri rule 10 CSR 10-1.010(3)(B)4.D "General Organization" establishes the air

quality modeling and air quality analysis functions for the Air Program. In addition, Missouri regulation 10 CSR 10-6.060(12)(F) "Construction Permits Required" requires the use of EPA-approved air quality models (e.g., those found in 40 CFR part 51, appendix W) for construction permitting. Rule 10 CSR 10-6.110(4) "Reporting & Emission Data, Emission Fees, and Process Information" requires specified sources of air pollution to report emissions to MDNR, which among other purposes may be utilized in modeling analyses. These data are available to any member of the public, upon request (10 CSR 10-6.110(3)(D)).

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(K) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011, submission.

*(L) Permitting Fees:* Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued,

the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

Section 643.079 of the Air Conservation Law provides authority for MDNR to collect permit fees, including Title V fees. EPA approved Missouri's Title V program in May 1997 (see 62 FR 26405). The permit application fees are codified in Missouri rule 10 CSR 10-6.065 "Operating Permits." In addition to the fees directly related to implementation and enforcement of Missouri's Title V program, additional construction permit fees are assessed and collected per state rule 10 CSR 10-6.060 "Construction Permits Required." EPA reviews the Missouri Title V program, including Title V fee structure, separately from this proposed action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA from taking future action regarding Missouri's Title V program.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that

the requirements of section 110(a)(2)(L) are met and is proposing to approve this element of the December 20, 2011, submission.

*(M) Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

Missouri's Air Conservation Law 643.050.3, RSMo requires that the MACC encourage political subdivisions to handle air pollution control problems within their respective jurisdictions to the extent possible and practicable, and to provide assistance to those political subdivisions. The MACC is also required to advise, consult and cooperate with other political subdivisions in Missouri. The Air Conservation Law 643.140, RSMo, provides the mechanism for local political subdivisions to enact and enforce their own air pollution control regulations, subject to the oversight of the MACC. As directed in subparagraph (2)(D)4.B. of Missouri rule 10 CSR 10-1.010 "General Organization," the Air Quality Planning Section must meet all "public participation requirements of state and Federal laws for rulemaking and SIP revisions." The MDNR's Air Pollution Control Program has a signed Memorandum of Understanding (MOU)

with Kansas City and Springfield/Greene County and a draft agreement with St. Louis County (to be finalized) which outlines the responsibilities for air quality activities with each local agency. In addition, MDNR participates in community meetings and consults with and participates in interagency consultation groups such as the Metropolitan Planning Organizations in both Kansas City and St. Louis. In Kansas City, MDNR works with the Mid-America Regional Council, and in St. Louis, MDNR works with East-West Gateway Coordinating Council of Governments.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(M) for the 2008 Pb NAAQS and is proposing to approve this element of the December 20, 2011, submission.

#### **V. What Action is EPA Proposing?**

EPA is proposing to approve the December 20, 2011, infrastructure SIP submission from Missouri which addresses the requirements of CAA sections 110 (a)(1) and (2) as applicable to the 2008 Pb NAAQS. Specifically, EPA is proposing to approve the following infrastructure elements, or portions thereof:

110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). As discussed in each applicable section of this rulemaking, EPA is not proposing action on section 110(a)(2)(I) - Nonattainment Area Plan or Plan Revisions Under Part D and on the visibility protection portion of section 110(a)(2)(J).

Based upon review of the state's infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in Missouri's SIP, EPA believes that Missouri has the infrastructure to address all applicable required elements of sections 110(a)(1) and(2) (except otherwise noted) to ensure that the 2008 Pb NAAQS are implemented in the state.

We are hereby soliciting comment on this proposed action. Final rulemaking will occur after consideration of any comments.

## **VI. Statutory and Executive Order Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state



law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **Statutory Authority**

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations, Lead,  
Reporting and recordkeeping requirements.

Dated: May 16, 2014.

**Mark Hague,**  
*Acting Regional Administrator,*  
*Region 7.*

**BILLING CODE 6560-50-P**

**[FR Doc. 2014-12912 Filed 06/03/2014 at 8:45 am; Publication  
Date: 06/04/2014]**